In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1638

WILLIAM GREEN JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Central District of California, petitioner was convicted of stealing a Mark 12 airplane radio and its power unit from a government owned Piper Cub airplane, in violation of 18 U.S.C. 641. The court of appeals affirmed (Pet. App. I; 436 F. 2d 39).

The sole contention advanced in the petition is that the trial judge denied petitioner the right to a jury trial by instructing that, on the basis of undisputed

facts, the property stolen was "property of the United States or of an agency thereof" within the meaning of Section 641. Petitioner does not deny—as indeed he cannot—that the stolen property was purchased by the government for the Fort Irwin Flying Club (Tr. 68, 83); that it was paid for out of club membership dues (Tr. 74); that the club is an agency of the government established pursuant to Army Regulation No. 28-95 (Tr. 78, 212-213); and that the government has a right to file a claim for the stolen property in favor of the United States (Tr. 214). As the court below held (Pet. App. I, A-5 - A-10) the instruction did not invade the province of the jury since the question whether, on these undisputed facts, the property belonged to the United States was purely one of law for the court. *Brown* v. *United States*, 201 F. 2d 767, 770 (C.A. 9); see also *Sinclair* v. *United States*, 279 U.S. 263, 298-299; *Cox* v. *United States*, 332 U.S. 442, 453; *Brown* v. *United States*, 334 F. 2d 488, 491-492, 497-501 (C.A. 9), affirmed on other grounds, 381 U.S. 437; contrast *United States* v. *England*, 347 F. 2d 425 (C.A. 7).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1971.

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